

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KITRICH A. POWELL,

Petitioner,

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WILLIAM GITTERE, *et al.*,

Respondents.

Case No. 2:06-cv-01264-KJD-DJA

ORDER

WILLIAM GITTERE, *et al.*,

Respondents.

In this capital habeas corpus action, the petitioner, Kitrich A. Powell, is represented by appointed counsel, the Federal Public Defender for the District of Nevada (FPD). Powell filed a Second Amended Petition for Writ of Habeas Corpus (ECF No. 105) and supporting exhibits (ECF No. 106) on February 22, 2021.

On April 13, 2021, the FPD filed a Motion to Stay Capital Habeas Proceedings (ECF No. 108), citing *Martinez v. Ryan*, 566 U.S. 1 (2021), and requesting that this action be stayed to allow the Court to determine whether Powell is competent to proceed and, if it is determined that he is not, to take steps to attempt to restore him to competency. In support of the motion for stay, the FPD filed under seal, as exhibits, copies of two letters written by Powell to the FPD in March 2021 (ECF Nos. 111-1 and 111-2). The FPD also supported the motion with a February 8, 2021, declaration of Melissa Piasecki, M.D. (ECF No. 106-65), reporting on a February 26, 2018, assessment of Powell. See Declaration of Melissa Piasecki, M.D., Exh. 318 (ECF No. 106-65) (filed on February 22, 2021, as an exhibit in support of the second amended petition). In her February 8, 2021, declaration, Dr. Piasecki opined that Powell was not, as of February 26, 2018, competent to proceed with this habeas corpus action, and that an updated assessment was necessary. See *id.* at ¶¶ 36–41. The FPD stated in the

1 motion that Dr. Piasecki's updated assessment was delayed because of the COVID-19
2 pandemic. See Motion to Stay Capital Habeas Proceedings (ECF No. 108), p. 6.

3 On May 25, 2021, the Court suspended Respondents' response to Powell's
4 second amended habeas petition, pending resolution of the motion for stay. See Order
5 entered May 25, 2021 (ECF No. 115).

6 Respondents filed a response to the motion for stay on July 1, 2021 (ECF No.
7 118). Respondents' position then was essentially that the question of Powell's
8 competency to proceed with this action should not be addressed until after Dr. Piasecki
9 provided an updated assessment. See Response to Motion for Stay (ECF No. 118).

10 On July 30, 2021, the FPD filed a reply in support of the motion for stay (ECF No.
11 120). In the reply, the FPD states that Dr. Piasecki met with and evaluated Powell at Ely
12 State Prison on July 17, 2021. Reply in Support of Motion for Stay (ECF No. 120),
13 p. 2. The FPD filed, with the reply, a declaration of Dr. Piasecki dated July 29, 2021
14 (ECF No. 121-1), updating her assessment of Powell based on her July 17, 2021,
15 evaluation. In her July 29, 2021, declaration, Dr. Piasecki opines that Powell is
16 incompetent to proceed with this action, and she recommends that he be transferred to
17 a forensic hospital facility, such as Stein Hospital in Las Vegas, for appropriate
18 treatment for restoration of competency. See Declaration of Melissa Piasecki, M.D.,
19 Exh. 1, ¶¶ 20–27 (ECF No. 121-1).

20 In view of the FPD's reply in support of the motion for stay (ECF No. 120),
21 and the declaration of Dr. Piasecki filed with that reply (ECF No. 121-1), the Court
22 determines that further briefing is necessary, so that Respondents may present their
23 position with regard to the motion for stay as now supported by Dr. Piasecki's
24 July 29, 2021, declaration, and so that the FPD may reply.

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1 **IT IS THEREFORE ORDERED** that Respondents will have 14 days from the
2 date of filing of this order to file a supplemental response to the motion for stay, and
3 then the FPD will have 7 days to file a supplemental reply in support of the motion.

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5 DATED THIS 26 day of August, 2021.

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8 **KENT J. DAWSON,**
9 **UNITED STATES DISTRICT JUDGE**

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